the legal development of the State. Not only has its work during the last year resulted in the enactment of such an important piece of legislation as the uniform Negotiable Instruments Law, but its efforts have also succeeded in directing attention to evils and stimulating useful legislation, even if the measures actually suggested by the association have not been adopted. Such, for example, has been the case in respect to admission to the bar. Though the association has, at every meeting since its organization, gone on record in favor of what may be called the uniform plan of bar admission recommended by the American Bar Association, it has been unsuccessful in inducing the legislature to act favorably upon its recommendations. Finally, however, part of its program has been put into force by legislation, namely, the withdrawal from all law schools of the privilege of admission of their graduates upon motion and the requirement of a definite period of study.

Comment on Recent Cases

ADMIRALTY JURISDICTION: WORKMEN'S COMPENSATION ACTS. —A case in the Supreme Court of the United States, *Southern Pacific Co. v. Jensen*,[1] holds, four justices dissenting,[2] that a state court of New York is without jurisdiction to try a case arising under its Workmen's Compensation Act, when the injury occurred upon a ship. This decision is of particular importance to California practitioners because it probably overrules a previous California case.[3]

The ground, briefly stated, upon which the majority of the court principally relied was that, while a state may have power to affect admiralty law in certain particulars, it may not pass any act which contravenes the existing federal admiralty law, whether that federal admiralty law is the result of congressional legislation or exists by the adoption in admiralty courts of general maritime rules, and that, furthermore, any act of a state legislature having this effect is as invalid in a state court

[1] (May 21, 1917), 244 U. S. 205, 37 Sup. Ct. Rep. 524.

[2] Holmes, Pitney, Brandeis, Clarke, JJ.

[3] North Pacific S. S. Co. v. Industrial Accident Commission (1917), 53 Cal. Dec. 170, 163 Pac. 199. For a discussion of this case, in one of its aspects, see a note in 5 California Law Review, 491, September, 1917, written and in print before, but published after, Southern Pacific Co. v. Jensen was decided. But see n. 18, infra.

as in an admiralty court. The last proposition, which has never before been so explicitly laid down by the Supreme Court,[4] seemed to the dissenting justices objectionable, but whether in its application to the case at bar alone, or in all cases, it is difficult to say. The majority's view, as a general proposition, seems to have the weight of reason behind it. An extreme case will illustrate the point: if a state statute gave a right of action in collision cases at night when the injuring ship failed to carry a green light to port and a red light to starboard, such a statute should be held invalid in state courts as well as in admiralty courts, for the whole course of maritime commerce would be thrown into confusion, since in the state courts the owner would be held liable for obeying the federal rule, which is, of course, the reverse.[5] It is certainly as true in admiralty matters, over which Congress has undoubted legislative power not based on the commerce clause,[6] as in matters concerning such commerce,[7] that some federal laws, in order to operate effectively, must necessarily abrogate state laws in conflict with them.

With its major premise as above stated, the court then held that the New York Workmen's Compensation statute contravenes as to maritime matters the already existing federal admiralty law. This minor premise, however, is at least questionable. Did the statute really prevent the effective operation of any rule of federal admiralty law? Acts that merely give a right to compensation in the absence of fault would seem rather to add to federal admiralty law than to hinder its operation; and although the fact that the statute in question places an unpleasant burden on an employer of labor, if he fails to insure or to satisfy a commission of his ability to pay compensation,[8] there seems to be no federal rule or statute directly opposed to the imposition of such burdens upon those engaging in admiralty transactions.[9] On the other

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[4] See, however, The Roanoke (1903), 189 U. S. 185, 47 L. Ed. 770, 23 Sup. Ct. Rep. 491. Cf. Gibbons v. Ogden (1824), 9 Wheat. 1.

[5] Cf., however, the Steamboat New York v. Rea (1855), 18 How. 223, 15 L. Ed. 380 and see, Workman v. New York (1900), 179 U. S. 552, 45 L. Ed. 314, 21 Sup. Ct. Rep. 212.

[6] Ex Parte Garnett (1891), 141 U. S. 1, 35 L. Ed. 631, 11 Sup. Ct. Rep. 840; Butler v. Boston and Savannah S. S. Co. (1889), 130 U. S. 527, 32 L. Ed. 1017, 9 Sup. Ct. Rep. 612; Janney v. Columbian Ins. Co. (1825), 10 Wheat. 411, 418, 6 L. Ed. 354. By these and other cases it would seem to be settled beyond dispute that Congress had legislative power over subjects falling within the scope of admiralty and maritime jurisdiction, irrespective of the commerce clause.

[7] E.g. Erie Railroad Co. v. Winfield (1917), 244 U. S. 170, 37 Sup. Ct. Rep. 556; New York Central Railroad Co. v. Winfield (1917), 244 U. S. 147, 37 Sup. Ct. Rep. 546; and cases there cited.

[8] Cf. Acts 1917 c. 586, § 29; Acts 1913 c. 176, § 33; similar to the New York Act, but with the penalty provision omitted.

[9] But cf. The Osceola (1903), 189 U. S. 158, 47 L. Ed. 760, 23 Sup. Ct. Rep. 483. There are federal statutes obviously passed to assist ship owners

hand, compensation acts usually provide a special tribunal to care for compensation cases, and it is conceivable that an act might be so framed that only such a tribunal with special machinery for inquiry and for making decrees could handle cases arising under it. In such an event, it might be held that the very nature of the right itself prevented the effective operation of the admiralty law, for if any right at all is created, so far as it is maritime it is enforceable in the admiralty courts, and therefore is part of such admiralty law in that particular state.[10] But there would seem to be no objection to the enforcement of ordinary compensation acts in admiralty courts.[11] Again, supervisory or "safety" provisions of compensation acts[12] might be so enforced as to conflict with federal inspection laws, passed under the admiralty power, but the effect of the operation of such provisions was not in issue in the case at bar. It is singular that the majority's decision makes practically no statement as to the respects in which the New York statute contravened the federal admiralty law.

The court also relied upon another ground in reaching its decision, holding that the statute did not fall within that clause of the Judicial Code,[13] "saving to suitors in all cases, a common law remedy, where the common law is competent to give it." This ruling was not necessary to the decision of the case, for the ground above mentioned would be in itself sufficient. It is difficult to reconcile with the leading case on the subject,[14] which was not cited. It is, indeed, a most unfortunate dictum, for it puts at large a question that many have assumed was

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and the like, but none of these specifically provide against the imposition of burdens by the states. Cf. R. S., §§ 4283-4285; Act June 26, 1884, c. 121, § 18, 23 Stat. 57; Act Feb. 13, 1893, c. 105.

[10] Of course a clause in a state act which gives a maritime right, limiting jurisdiction to a state court has been disregarded. Cf. Aurora Shipping Co. v. Boyce (1911), 191 Fed. 960; The Glide (1897), 167 U. S. 606, 42 L. Ed. 296, 17 Sup. Ct. Rep. 930. That is not the question here. The right in the case supposed is unenforceable in admiralty courts, not because the state says so, but because the admiralty courts lack machinery to enforce it. The view might be taken, however, that, since the admiralty courts had jurisdiction, and only lacked such machinery, the right created was still valid. This seems to be the explanation of cases like United Transportation, etc. Co. v. New York etc. Co. (1911), 185 Fed. 386. The question is still unsettled by decision whether a right given by a state, not otherwise contravening the federal admiralty law, is unenforceable in a state court merely because it cannot also be enforced in an admiralty court owing to lack of judicial machinery. This aspect of compensation acts was not discussed in the principal case.

[11] Berton v. Tietjen & Lang Dry Dock Co. (1915), 219 Fed. 763.

[12] Cf. Acts 1917 c. 586, §§ 33-54; Acts 1913 c. 176, §§ 51-72.

[13] §§ 24, 256 (36 Stats. 1091).

[14] Knapp, Stout & Co. v. McCaffrey (1900), 177 U. S. 638, 44 L. Ed. 921, 20 Sup. Ct. Rep. 824. The minority of the court believed the New York act not objectionable in this respect.

clearly settled. It would also seem that until there is a case where a state's laws hinder the effective operation of federal admiralty law, the state should have a free hand in legislation concerning maritime affairs, not confined merely to giving rights and remedies similar to those of the "common law". The saving clause should not be construed as instancing a parental solicitude in Congress towards common law institutions and against innovations.[15] It was inserted from abundant caution to make clear that in vesting admiralty and maritime jurisdiction in the District Courts, Congress intended no legislative utterance upon the scope of that jurisdiction.[16] It is at least doubtful, as one justice in the minority points out,[17] whether Congress would have constitutional power to limit a state's legislative activity over maritime matters occurring within its jurisdiction, when such activity does not contravene federal law. The question is not one of due process, and today such a free hand is desirable when new rights are constantly being demanded by imperious elements of society. Any other construction of the saving clause, unwarranted by precedent, results in an unnecessary and inadvisable limitation upon a state's legislative power.[18]

A. T. W.

ADVERSE POSSESSION: ARE MINOR HEIRS BARRED BY RUNNING OF STATUTE OF LIMITATIONS AGAINST ADMINISTRATOR?—Based on a statute, in its essential provisions identical with Section 328 of the California Code of Civil Procedure, the case of *Wren v. Dixon*,[1] decided by the Nevada Supreme Court, holds that if adverse possession is taken of lands under administration, the running of the Statute of Limitations against the administrator will not bar heirs who are under disability of infancy.

The rule is well settled and is admitted by the present case, that where title is held by a trustee, a stranger may acquire title by possessing adversely to the trustee; when the Statute runs

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[15] See 5 California Law Review, 491.

[16] Cf. American Steamboat Co. v. Chace (1872), 16 Wall. 522, 21 L. Ed. 369.

[17] Pitney, J., p. 226.

[18] Since the foregoing note was in the printers' hands, it came to the writer's notice that Congress, influenced by the decision in the principal case, on October 5, 1917, amended Judicial Code, §§ 24, 256, adding to the saving clause: "and to claimants the rights and remedies under the workmen's compensation law of any State." See San Francisco Chronicle, October 21, 1917. But does the Act really accomplish its purpose? The exceptions in the saving clause were certainly never intended to validate state legislation contravening federal admiralty law. By all proper rules of construction, specific mention of workmen's compensation acts as "saved" does not broaden the scope of the saving clause in this respect.

[1] (Nev., Dec. 15, 1916), 161 Pac. 722.